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**EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW**
Office of Policy | Legal Education and
Research Services Division

| Policy & Case Law Bulletin
August 31, 2018

Federal Agencies

DOJ

- [BIA Issues Decision in Matter of Bermudez-Cota](#) — EOIR

27 I&N Dec. 441 (BIA 2018)

A notice to appear that does not specify the time and place of an alien's initial removal hearing vests an Immigration Judge with jurisdiction over the removal proceedings and meets the requirements of section 239(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a) (2012), so long as a notice of hearing specifying this information is later sent to the alien. [Pereira v. Sessions](#), 138 S. Ct. 2105 (2018), distinguished.

- [BIA Issues Decision in Matter of J. M. Acosta](#) — EOIR

27 I&N Dec. 420 (BIA 2018)

(1) A conviction does not attain a sufficient degree of finality for immigration purposes until the right to direct appellate review on the merits of the conviction has been exhausted or waived. (2) Once the Department of Homeland Security has established that a respondent has a criminal conviction at the trial level and that the time for filing a direct appeal has passed, a presumption arises that the conviction is final for immigration purposes, which the respondent can rebut with evidence that an appeal has been filed within the prescribed deadline, including any extensions or permissive filings granted by the appellate court, and that the appeal relates to the issue of guilt or innocence or concerns a substantive defect in the criminal proceedings. (3) Appeals, including direct appeals, and collateral attacks that do not relate to the underlying merits of a conviction will not be given effect to eliminate the finality of the conviction.

- [Virtual Law Library Weekly Update](#) — EOIR

This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

- [USCIS Posts Information on Refugee Processing and Security Screenings](#)

In late August, USCIS posted information online about the security screening and background checks required by the [U.S. Refugee Admissions Program \(USRAP\)](#) as well as the refugee resettlement process. The USRAP is an interagency effort which includes a number of governmental and non-governmental partners both abroad and in the United States.

- [USCIS Extends and Expands Suspension of Premium Processing for H-1B Petitions to Reduce Delays](#)

On August 28, 2018, USCIS announced it is extending the previously announced temporary suspension of premium processing for cap-subject H-1B petitions and, beginning Sept. 11, 2018, will be expanding this temporary suspension to include certain additional H-1B petitions. USCIS expects that these suspensions will last until Feb. 19, 2019, and will notify the public before resuming premium processing for these petitions.

- [Re-Registration Period Now Open for Temporary Protected Status for Somalia](#)

On August 27, 2018, USCIS announced that current beneficiaries of Temporary Protected Status (TPS) under Somalia's designation who want to maintain their status through the extension date of March 17, 2020, must re-register between August 27, 2018, and October 26, 2018. Re-registration procedures, including how to renew employment authorization documents (EADs), have been published in the [Federal Register](#).

DOS

- [DOS Issues 30-Day Notice of Proposed Information Collection: Application for Immigrant Visa and Alien Registration](#)

On August 28, 2018, DOS requested public comment until September 27, 2018, regarding the inclusion of additional questions including those related to social media use in the Electronic Application for Immigrant Visa and Alien Registration (DS-260). The consular officer would rely on this information to determine whether an applicant is eligible for a visa. For example, visa applicants would be asked to submit social media identifiers used in the previous five years.

- [DOS Updates 9 FAM](#)

DOS made updates to 9 FAM, including to section [601.13 \(U\)](#), adding a new subchapter on Consular returns and how to draft a return, and section [402.3 \(U\)](#), updating the required minimum wage for Maryland and removes UNPKO in Liberia from the list of United Nations peacekeeping operations list.

International

UN

- [UNHCR Issues a Guidance Note on Outflow of Nicaraguans](#)

In late August, UNHCR issued guidance that due to a rise in violence and human rights abuses caused by a continuing political and social crisis, many Nicaraguans have fled their country. "Based on UNHCR and partner profiling and border monitoring exercises, UNHCR observes that the majority of asylum claims are based on individuals' real or imputed political opinion, and therefore considers that they are likely to be in need of international refugee protection."

First Circuit

- [Aguilar-De Guillen v. Sessions](#)

No. 17-2095, 2018 WL 4057382 (1st Cir. Aug. 27, 2018), (**Asylum; CAT**)

The First Circuit denied the PFR, holding that Aguilar-De Guillen did not establish past persecution because she did not establish a nexus between the harm she suffered and a protected ground. The court also held that Aguilar-De Guillen did not establish a well-founded fear of future persecution on account of a protected ground from threats her family received by gang members for refusing to make monthly payments to a gang from their business in El Salvador. The court held that Aguilar-De Guillen's proposed particular social group of "single mothers without the protection of a male figure and unable to relocate in their country" lacked particularity, and that the gang targeted Aguilar-De Guillen and her family for extortion because of their wealth. The court also determined that Aguilar-De Guillen did not establish that she was entitled to Convention Against Torture (CAT) protection, finding the Board's CAT determination to be "well supported."

Second Circuit

- [Singh v. Sessions](#)

No. 17-550, 2018 WL 4090597 (2d Cir. Aug. 28, 2018) (unpublished) (Credibility)

The Second Circuit granted the PFR and remanded, holding that the two purported inconsistencies in Singh's testimony were an insufficient basis on which to uphold the IJ's adverse credibility finding. The court stated that the IJ "simply misunderstood the testimony, an understandable occurrence by a hearing officer obliged to adjudicate several cases in a single day and promptly dictate findings."

Fourth Circuit

- [United States v. Bell](#)

No. 16-4343, 2018 WL 4087893 (4th Cir. Aug. 28, 2018) (Crime of Violence)

The Fourth Circuit concluded that robbery with a deadly or dangerous weapon under Maryland Code, Article 27 § 488 is a violent felony under 18 U.S.C. § 924(e)(2)(B)(i), which is analogous to 18 U.S.C. § 16(a).

Seventh Circuit

- [Alvarenga-Flores v. Sessions](#)

No. 17-2920, 2018 WL 4090699 (7th Cir. Aug. 28, 2018) (Credibility)

The Seventh Circuit denied the PFR, concluding that substantial evidence supports the decisions of the IJ and Board that Alvarenga-Flores lacked credibility based on inconsistencies in his statements regarding encounters with gang members in El Salvador. One judge dissented, asserting that the discrepancies in Alvarenga-Flores's statements were not sufficient to support an adverse credibility determination when viewing the full context of his testimony and statements as a whole.

Eighth Circuit

- [Ramirez v. Sessions](#)

No. 17-1414, 2018 WL 4100068 (8th Cir. Aug. 29, 2018) (Due Process; Motions)

The Eighth Circuit denied the PFR, concluding that Ramirez, a woman from Guatemala, did not establish a due process violation resulting from her merits hearing or from errors in the IJ's decision referring to her as a man from Mexico. The court noted that "the Board's order shows it actively analyzed Ramirez's arguments on appeal and reached its own conclusion—without adopting the IJ's errors." The court also concluded that the Board did not abuse its discretion in denying Ramirez's motion to reopen or reconsider because the motion "largely elaborated on the same issues raised in her original appeal."

Ninth Circuit

- [Diaz-Jimenez v. Sessions](#)

No. 15-73603, 2018 WL 4122844 (9th Cir. Aug. 30, 2018) (False Claim to U.S. Citizenship)

The Ninth Circuit granted the PFR and remanded, holding that Diaz-Jimenez was not inadmissible for making a false claim of United States citizenship to obtain private employment under section 212(a)(6)(C)(ii)(I) of the Act because there was no basis in the record to conclude that Diaz-Jimenez represented himself as a U.S. citizen on a Form I-9 ("Employment Eligibility Verification"). The court concluded that a false representation of U.S. citizenship for a "purpose or benefit" under section 274A of the Act includes an intent to obtain private employment, but must be based on representing oneself as a U.S. citizen on a Form I-9.

- [Quiroz Parada v. Sessions](#)

No. 13-73967, 2018 WL 4100184 (9th Cir. Aug. 29, 2018) (Asylum; CAT)

The Ninth Circuit granted the PFR and remanded, concluding that Quiroz Parada established past persecution based on murder, physical assault, home invasions, and specific death threats experienced by Quiroz Parada and his family from FMLN guerillas during the Salvadoran Civil War on account of his membership in the particular social group of his family and on account of his imputed political opinion. The court also concluded that substantial evidence did not support the agency's determination that DHS successfully rebutted the presumption of future persecution, considering that the country conditions evidence in the record was "five years out of date" at the time of the IJ's decision, but nonetheless also showed that the FMLN had risen to power in El Salvador and had connections with MS gang members. The court also determined that the Board erroneously denied Quiroz Parada's application for CAT protection by failing to consider all evidence relevant to the possibility of future torture and by construing the "government acquiescence" standard too narrowly, stating that "awareness and willful blindness" of any Salvadoran government official suffices.

- [Lorenzo v. Sessions](#)

No. 15-70814, 2018 WL 4100360 (9th Cir. Aug. 29, 2018) (Controlled Substances)

The Ninth Circuit granted the PFR, concluding that the definition of "methamphetamine" applicable to convictions under California Health & Safety Code §§ 11378 and 11379(a) is broader than the definition of methamphetamine under the federal Controlled Substances Act, 21 U.S.C. § 812, and thus the convictions do not qualify as "controlled substance" violations under section 237(a)(2)(B)(i) of the Act. The court also concluded that §§ 11378 and 11379(a) are not divisible in this regard because the different varieties of methamphetamine under California law are alternative means of committing a single crime, and thus are categorically overbroad. The court determined that it was not required to give deference to the realistic probability approach articulated under [Matter of Ferreira](#), 26 I&N Dec. 415 (BIA 2014), because that holding was not an interpretation of the Act, but an interpretation of [Moncrieffe v. Holder](#), 569 U.S. 184 (2013), and [Gonzales v. Duenas-Alvarez](#), 549 U.S. 183 (2007).

- [United States v. Flores](#)

No. 16-50096, 2018 WL 4086975 (9th Cir. Aug. 28, 2018) (Aggravated Felony)

The Ninth Circuit concluded that “receipt of stolen property under California Penal Code § 496(a) is a categorical match to the generic federal crime of receipt of stolen property,” an aggravated felony theft offense under section 101(a)(43)(G) of the Act.

- [Barrera-Lima v. Sessions](#)

No. 13-73022, 2018 WL 4038193 (9th Cir. Aug. 24, 2018) (CIMT)

The Ninth Circuit granted the PFR, holding that the offenses of indecent exposure under Washington Rev. Code § 9A.88.010(1) or Washington Rev. Code § 9A.88.010(2)(b) are not categorically CIMTs. Applying [Matter of Cortes-Medina](#), 26 I&N Dec. 79 (BIA 2013), the court concluded that section 9A.88.010(1) is not a CIMT because it does not require sexual motivation or a lewd intent. The court also stated that even though section 9A.88.010(2)(b) punishes indecent exposure directed toward a protected class of victims, namely children under the age of 14, the statute punishes indecent exposure even if no one actually witnessed the exposure, so long as the exposure took place in the presence of a child. The court thus held that section 9A.88.010(2)(b) “is simply written too broadly to capture only depraved conduct that shocks the public conscience.” One judge dissented, asserting that the court should have granted the government’s unopposed motion to remand to allow the parties and Board the opportunity to develop an “innovative solution to resolve the case.”